

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LENWOOD HAMILTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:17-cv-00169-AB
	)	
LESTER SPEIGHT, EPIC GAMES, INC.,	)	
MICROSOFT, INC., MICROSOFT	)	
STUDIOS, and THE COALITION,	)	
	)	
Defendants.	)	

**DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

1. One of Epic's lead designers, Cliff Bleszinski, created the concept for *Gears of War* in the early 2000s. (**Exhibit A**, Transcript of Rod Fergusson Deposition ("Fergusson Tr.") 51:3-21; **Exhibit B**, Transcript of Chris Perna Deposition ("Perna Tr.") 92:7-18; **Exhibit C**, Transcript of Cliff Bleszinski Deposition ("Bleszinski Tr.") 9:22-10:8; **Exhibit D**, Epic's Responses to Plaintiff's First Interrogatories ("Epic's ROG Response") No. 3.)

2. *Gears of War 1* ("*Gears I*") features the intergalactic soldiers known as "Delta Squad" in their fight on the planet Sera against a race of reptilian humanoids called the "Locust Horde." In the game narrative, the Locust Horde is rumored to have been born out of a research accident related to "Imulsion," a fictional energy source. Driven from Sera's subterranean regions by other reptilian creatures, the Locust Horde battles Delta Squad and the rest of the planet's surface-dwellers. In *Gears I*, Delta Squad includes four soldiers: Marcus Fenix, Dominic Santiago, Damon Baird, and Augustus "Cole Train" Cole. (Dkt. 33, Second Amended Complaint ("SAC") ¶ 36; Epic ROG Response No. 3; **Exhibit E**, Declaration of Rod Fergusson ("Fergusson Decl."), ¶ 7.) By 2004 or 2005, an initial sketch had been created for the Cole character. The sketch featured a character with a muscular physique, dark skin, dark eyes, and

some type of wristwear. (See **Exhibit F**, Transcript of James Hawkins Deposition (“Hawkins Tr.”) 43:18-45:16; **Exhibit G**, Hawkins Tr. Ex. 1 (early concept drawing of Cole (MSFT\_HAMILTON 0000282))); Fergusson Tr. 93:3-14.)

3. A more detailed sketch was then created by Epic concept artist Jay Hawkins. As he worked on the sketch, Hawkins received input from his colleagues at Epic. (Hawkins Tr. 18:6-19; 36:5-37:1 (describing weekly meetings during which his work was discussed).)

4. Cole was designed to be a slightly cocky athlete, drawing on inspiration from many sources, including, among others, the character played by Jamie Foxx in the 1999 film *Any Given Sunday*. Cole’s character has a heart of gold and provides comic relief in the game narrative. (See Hawkins Tr. 62:3-63:1; **Exhibit H**, Transcript of Microsoft Rule 30(b)(6) Deposition (“Microsoft 30(b)(6) Tr.”) 99:7-16, 127:17-128:1; **Exhibit I**, Transcript of Epic Rule 30(b)(6) Deposition by Cliff Bleszinski (“Epic 30(b)(6) [Bleszinski] Tr.”) 28:17-30:1; **Exhibit J**, Perna Deposition Ex. 3 (MSFT\_HAMILTON\_00343204), **Exhibit K**, Ferguson Deposition Ex. 4.)

5. Character artist Kevin Lanning created a three-dimensional model of the Cole character. (See **Exhibit L**, Transcript of Kevin Lanning Deposition (“Lanning Tr.”) 26:6-14.)

6. The visual appearance of the Cole character was inspired by numerous famous individuals. The collection of images in the “source art” folder for the Cole character includes celebrities, athletes, and movie characters. That folder does not include an image of Hamilton or his persona “Hard Rock Hamilton.” (See Epic 30(b)(6) [Bleszinski] Tr. 29:9-30:10 (Epic concept artists used a variety of images for modeling the character’s appearance, none of Hamilton); Hawkins Tr. 62:3-22 (Michael Clarke Duncan in the movie “Green Mile”); Lanning Tr. 45:8-14 (“The Rock,” Michael Clarke Duncan, Tupac Shakur, Xzibit), 108:17-109:18 (used

Arnold Schwarzenegger and other bodybuilders for certain “anatomical corrections”); Fergusson Decl. ¶ 8.)

7. In the game narrative, Cole is a large, muscular, black former athlete who became a Delta Squad soldier and who hails from the fictional town of Hanover, where he played “thrashball,” a fictional sport. Thrashball is loosely based on football. (Fergusson Tr. 114:7-8 (thrashball is “Seran version of football”), 164:11-15 (Cole played for Hanover Cougars).)

8. In *Gears I*, Cole wears heavy armor on his torso and carries weaponry. An exemplary image of the Cole character from *Gears I* appears below.



(Fergusson Decl. ¶ 10 Ex. 2.) The primary Cole uniform does not have a neck chain, hat, or wrist cuffs. (Dkt. 25-3, Declaration of Ambika Doran in Support of Motion to Dismiss (“Doran MTD Decl.”) Dkt. 25-4, 25-6, 25-8, 25-10, 25-12 (copies of *Gears* games).)

9. In February 2006, Epic offered Lester Speight the role of voice actor for the Cole character. (**Exhibit M**, Transcript of Lester Speight Deposition (“Speight Tr.”) 39:10–40:5; **Exhibit N**, Speight Deposition Ex. 1.)

10. Speight is an actor and voice actor. (Speight Tr. 8:10–9:8, 21:5–22:8.)

11. Speight played college football and tried out for the National Football League. (Speight Tr. 9:12–10:9.)

12. Speight was a wrestler from 1988 to 1998. (Speight Tr. 11:8–15.)

13. Bleszinski decided to cast Speight as the voice of Cole based on Speight's performance as "Terry Tate: Office Linebacker" in one or more Reebok commercials, one of which aired during the 2003 Super Bowl. (Speight Tr. 19:22-22:8, 20:15–17; Bleszinski Tr. 25:4-13, 25:4-26:3 (stating when he saw a commercial, he thought "I want to go to war with that guy," making the casting a "no-brainer").)

14. Speight did not try out or audition for the Cole voice role; Epic offered it to him directly. (Speight Tr. 15:11–16, 18:7-12, 18:18-20:14, 22:15-23:15; Fergusson Tr. 110:20-111:4, 111:21-112:4, 127:14-19; **Exhibit Q**, Transcript of Michael Larson Deposition ("Larson Tr.") 98:18-20, 122:2-9; Bleszinski Tr. 25:4-13, 25:21-26:3.)

15. The design of Cole's primary or default "skin" was largely complete before Speight was cast as the voice of Cole. A "skin" is an avatar or costume that a player can use to modify the appearance of a character in the game. (Fergusson Decl. ¶ 18; Fergusson Tr. 125:19-126:13, 154:22-155:11; Lanning Tr. 91:11-92:10.)

16. Speight provided the actual voice for the Cole character in every *Gears of War* game. (Speight Tr. 72:21–73:3, 46:13-47:20; Fergusson Tr. 73:18-21, 122:4-124:3. *See also* Larson Tr. 121:4-7 ("[W]as Lester Speight the only voice actor who performed the role of Augustus Cole in the Gears of War franchise? A. Yes."); Dkt. 25-3, Doran MTD Decl. Dkt. 25-5 at 4, 25-7 at 3, 25-9 at 5, 25-11 at 3, 25-13 (credits from each game identify Lester Speight as the voice of Cole Train); **Exhibit P**, Transcript of Lenwood Hamilton Deposition ("Hamilton Tr.") 100:20-25 ("Mr. Lester Speight is a professional wrestler, and he's the voiceover for that character.").)

17. Speight has appeared at *Gears of War* events to promote his role as the voice for the Cole character. (**Exhibit Q**, Speight Resp. to Plaintiff's First Interrog., Response No. 1.)

18. Speight has not changed the voice he uses for the Cole character. (Speight Tr. 58:12–14; Fergusson Tr. 151:8-10.)

19. Speight has provided no input into the Cole character’s appearance or storyline. (Speight Tr. 44:11–17; 53:21–55:9, 63:2-5; 110:3-16; Microsoft 30(b)(6)(6) Tr. 125:8-12; Fergusson Tr. 153:20-154:18, 155:12-156:12, 169:15-170:1; Lanning Tr. 119:22-121:19.)

20. Microsoft did not participate in the voice casting for the Cole character in *Gears I*. (Microsoft 30(b)(6)(6) Tr. 37:2-6.)

21. Microsoft did not participate in creating the Cole character’s appearance or personality for *Gears I*, *Gears of War 2* (“*Gears 2*”), *Gears of War 3* (“*Gears 3*”), or *Gears of War Judgment* (“*Gears Judgment*”). Microsoft was the publisher of those games. (Microsoft 30(b)(6) Tr. 35:21-36:22, 94:18-95:9, 108:1-7, 115:16-20, 115:21-116:2, 116:20-117:3; Epic 30(b)(6) [Bleszinski] Tr. 18:18-19:5; Fergusson Tr. 45:9-47:12.)

22. The only change, if any, made to Cole’s appearance after Speight was cast as the Cole character was that Cole’s arms may have been made larger. Speight did not participate in any decision to make Cole’s arms larger, and Cole’s arms were not modeled on Speight’s arms. (Fergusson Decl. ¶ 12; Fergusson Tr. 151:11-152:7, 154:19-21; Speight Tr. 44:19–45:2; Lanning Tr. 107:18-109:19; Epic 30(b)(6) [Bleszinski] Tr. 34:10-15.)

23. Speight based his portrayal of the Cole character on himself, not Hamilton. (Speight Tr. at 57:12-21.)

24. Epic completed development of *Gears I* in 2006, and Microsoft published the game on or about November 7, 2006. (Fergusson Decl. ¶ 14; SAC ¶¶ 33-34.)

25. Epic completed development and Microsoft published *Gears 2* on or about November 7, 2008. (Fergusson Decl. ¶ 14; SAC ¶¶ 42-43.)

26. The primary Cole skin did not change between *Gears 1* and *Gears 2*. (Fergusson Decl. ¶ 14; Perna Depo. 71:12-13 (“Gears 2 Cole was the same as Gears 1.”).)

27. Epic completed development and Microsoft published *Gears 3* on or about September 20, 2011. (Fergusson Decl. ¶ 16).

28. In *Gears 3*, more detail was added to the appearance of all the characters, including Cole. Other than this, no characteristics of the primary skin of the Cole character were changed. (Fergusson Decl. ¶ 16; Fergusson Tr. at 98:20-99:6 (Cole character generally unchanged from *Gears 1* to *Gears 2* to *Gears 3*).)

29. In *Gears 3*, Epic introduced alternative skins that players could unlock through gameplay. (Fergusson Decl. ¶ 18)

30. One skin shows Cole wearing a thrashball uniform. An exemplary depiction of “Thrashball Cole” is presented below.



(Fergusson Decl. ¶ 19, Ex. 6.) This version of Cole does not have a neck chain, a hat (other than a helmet), a gold tooth, or wrist cuffs. (Doran MTD Decl. Dkt. 25-4, 25-6, 25-8, 25-10, 25-12 (copies of *Gears* games).)

31. “Thrashball Cole” could be “unlocked” by players during a limited time period. (Fergusson Decl. ¶ 19.)

32. Another skin for Cole in *Gears 3* was “Superstar Cole.” “Superstar Cole” shows Cole as a thrashball player, but not in uniform, before he joined the military. Superstar Cole wears a fedora, sunglasses, sweatbands or compression bandages, a watch, and a chain necklace with a replica of a *Gears of War* weapon hanging from it. An exemplary depiction of “Superstar Cole” is depicted below.



(**Exhibit R**, Declaration of Ambika Doran in Support of Motion for Summary Judgment (screenshot of Superstar Cole); Fergusson Decl. ¶ 18, Ex. 5; Hawkins Tr. 68:14-69:7. *See also* SAC Exs. L & M (additional images of Superstar Cole in gameplay).)

33. The design for “Superstar Cole” was implemented by Epic character artist Mike Kime. Kime searched the Google search engine for reference material to create his rendering of Superstar Cole, using terms like “shades,” “hats,” “tank top,” and “white tank top.” Kime also searched for images of musicians Xzibit and WC. Kime grew up listening to these musicians and thought he would find pictures of them wearing tanks tops that would allow him to “look at how the clothing rests on the anatomy.” Kime looked at the online hat shop Goorin Brothers for



examples of hats. (See **Exhibit S**, Transcript of Michael Kime Deposition (“Kime Tr.”) 27:7-15, 28:8-29:19, 30:14-21, 33:7-18.)

34. The Superstar Cole skin could be “unlocked” by playing a certain number of hours or acquiring the skin separately. (Fergusson Decl. ¶ 18; Epic 30(b)(6) [Bleszinski] Tr. 21:9-18.)

35. The Superstar Cole skin does not have Chippendale cuffs or black and white calf-high boots. (Doran MTD Decl. Dkt. 25-4, 25-6, 25-8, 25-10, 25-12 (copies of *Gears* games).)

36. Epic completed development and Microsoft published *Gears Judgment* on or about March 19, 2013. (Fergusson Decl. ¶ 20; SAC ¶ 52.)

37. *Gears Judgment* is a prequel to the previous games in the series, and takes place approximately 12 years earlier in time. Cole appears younger in *Gears Judgment* than in the other games. (Fergusson Decl. ¶ 20 and Ex. 7.)

38. In January 2014, Microsoft purchased the *Gears of War* franchise from Epic, and Epic had no further involvement in the *Gears of War* series. (Fergusson Decl. ¶ 21; SAC ¶ 54.)

39. On or about August 25, 2015, Microsoft published *Gears Ultimate*, which was a remastered version of *Gears 1*. (Fergusson Decl. ¶ 22; SAC ¶ 66.)

40. On or about October 11, 2016, Microsoft published *Gears 4*. (Fergusson Decl. ¶ 23; SAC ¶ 70.)

41. *Gears 4* takes place approximately 25 years after *Gears 3*. Cole appears older in *Gears 4* than in the previous games. (Fergusson Decl. ¶ 23 Ex. 8.)

42. At no time in any of the *Gears of War* games is there any reference to a “Gorilla caricature,” “Soul City,” “Soul City,” or “Defender of the Youth of America.” At no time in any of the *Gears of War* games does Cole have a gold tooth, Chippendale cuffs, or black-and-white



calf-high boots. (Fergusson Decl. ¶ 24; Doran MTD Decl. Dkt. 25-4, 25-5, 25-6, 25-7, 25-8, 25-8, 25-9, 25-10, 25-11, 25-12 (copies of *Gears* games and screenshots of Cole in gameplay).)

43. At no point in any of the *Gears of War* games is Cole identified as a wrestler, former wrestler, or aspiring wrestler. At no point in the games can someone play as a wrestler. (Fergusson Decl. ¶ 10; Doran MTD Decl. Dkt. 25-4, 25-6, 25-8, 25-10, 25-12 (copies of *Gears* games).)

44. At no point in any of the *Gears of War* games is there any reference to Plaintiff Lenwood Hamilton (“Hamilton”), or any other moniker for Hamilton, including “Skip” Hamilton, Hard Rock Hamilton, or Soul City Wrestling. (Fergusson Decl. ¶ 24; Doran MTD Decl. Dkt. 25-4, 25-6, 25-8, 25-10, 25-12 (copies of *Gears* games).)

45. Hamilton, originally from Philadelphia, Pennsylvania, is a former football player and professional wrestler who lives in Los Angeles, California, where he works as a driver for his attorney, John Pierce. (SAC ¶¶ 7-8, 10-13; Hamilton Tr. 30:9-16, 38:3-40:10.)

46. Hamilton has never served in the military. (Hamilton Tr. 99:2-4.)

47. Hamilton did not play college or professional football in 1983. (Hamilton Tr. 273:10-12, 279:9-280:2; *see also id.* 271:19-273:9 (Hamilton was arrested for, convicted of, and imprisoned for aggravated rape until December 23, 1983; his conviction was later overturned and he was released).)

48. In the summer of 1984, Hamilton tried out for but did not receive a contract from the Philadelphia Eagles. (Hamilton Tr. 280:3-10; SAC ¶ 10.)

49. Hamilton played in one game for the Philadelphia Eagles, during the 1987 season, which was shortened because of a strike. (SAC ¶ 12; Hamilton Tr. 285:11-19.) Hamilton played in the Canadian Football League from 1984 to 1985. (SAC ¶ 11.)

50. At no time in his football career did Hamilton wear a jersey with the number 83. (Hamilton Tr. 270:1-4 (North Carolina State jersey “might have been 25”); 271:12-13 (Southern University jersey was “98 or 99”); 283:2-5 (no memory of Edmonton Eskimos jersey number); 285:11-286:25; **Exhibit T**, Hamilton Deposition Ex. 20, 1987 Eagles Roster (no memory of Eagles jersey number for 1987 game; Eagles roster shows Hamilton as “99” and Kevin Bowman as “83”).)

51. Following the game for the Eagles in 1987, Hamilton did not play professional football again. Hamilton transitioned to professional wrestling. (SAC ¶¶ 12-13.)

52. Hamilton formed Soul City Wrestling in 1997. In May 1998, he debuted what he calls the Hard Rock Hamilton persona. (SAC ¶¶ 16-17; **Exhibit U**, Newspaper article produced by Hamilton at Bates No. LH00023 (discussing debut of Soul City Wrestling); *see also* SAC Ex. B (Hamilton headshot).)

53. Hamilton claims that the Cole character unlawfully incorporates the following characteristics, features, and accoutrements: “Voice, Physical Likeness, Derby hat, Wrist Cuffs, Wrist Bands, Sleeveless Garments, Neck Chain, Gold Tooth, Brawny and Muscular Physique, Ringside Mannerisms, Swagger, ‘Ham-It-Up’ Demeanor, “Gorilla” caricature [SAC Ex. C], Soul City, Soul City Wrestling, Soul City Mentoring, Soul City Sports, Soul City Entertainment, ‘Hard Rock’ Hamilton, ‘Defender of the Youth of America,’ and football history.” (**Exhibit V**, Hamilton Response to Defendants’ Interrogatories (“Plaintiff’s ROG Response”) No. 1.)

54. Hamilton testified that the personality of Cole Train is “totally the opposite” of his own personality and that of his Hard Rock Hamilton wrestling character. (Hamilton Tr. 174:10-24 (“This guy [Cole Train character] is ignorant, he’s boisterous and he shoots people, he cusses people out, *that’s not me*. What he’s portraying, he’s using my voice and looking like me, and that’s Lester Speight. *And it’s totally against what I believe in.*” (emphasis added); 231:24

to 225:12 (“And for them to take my likeness and my, take me and put me, portray me as a person that shoots people, curses their mom out, and cusses like Cole does, *that’s not portraying Hard Rock Hamilton. That ain’t me.* . . . that’s not my temper. That’s not my attitude. . . . He stands for totally the opposite of what I was trying to do . . . .” (emphasis added)).)

55. Hamilton claims the following characteristics are distinctive of Hard Rock Hamilton’s persona: derby hat; Chippendale cuffs, bow tie and shirt lapel/neck collar; body suit with stirrups and tassels; Versace sunglasses; sleeveless outfit; calf-high black and white boots; bandana; neck chain; the number “83”; “brown eyes,” “brown face,” “bone structure,” and “peanut head.” (Hamilton Tr. 61:20- 64:23; 117:6-13; 122:10-13; 132:14-17.) The neck chain on its own was not essential to the Hard Rock Hamilton persona. (Hamilton Tr. 78:3-79:1.)

56. Hamilton decided to include a derby hat as part of his Hard Rock Hamilton persona because he “liked the early-day bouncer look.” (Hamilton Tr. 70:13-17.)

57. Many other celebrities share the same characteristics that Hamilton identified as distinctive to him. (*See supra* ¶¶ 54, 56). For example:

a. The Apollo Creed character from the “Rocky” films, a boxer played by actor Carl Weathers, has a “brawny and muscular physique” and wore a sleeveless shirt and a hat. (Hamilton Tr. 172:3-12, **Exhibit W**, Hamilton Deposition Ex. 9.)

b. The wrestler and actor Mr. T has a muscular physique, and has worn a sleeveless shirt, gold wrist cuffs, and chain necklaces. (Hamilton Tr. 173:13-175:3; **Exhibit X**, Hamilton Deposition Ex. 10.)

c. The wrestler known as “The Godfather” has a muscular physique and has worn a hat, sleeveless shirt, sunglasses, and chain necklaces as part of his wrestling persona. (Hamilton Tr. 179:14-180:4; **Exhibit Y**, Hamilton Deposition Ex. 13.)

d. The wrestler Ric Flair has a muscular physique and wears a sleeveless shirt. (Hamilton Tr. 186:3-23; **Exhibit Z**, Hamilton Deposition Ex. 15.) Ric Flair inspired part of Hamilton's Hard Rock Hamilton costume. (Hamilton Tr. 186:8-12 ("My outfit with the hood, this is where I think Angela got the idea to make the hood with things *like Ric Flair* would come out in, that robe that he used to wear." (emphasis added)).)

e. The wrestler Curtis Hughes (also known as "Mr. Hughes") wears suspenders, a long-sleeve white shirt, a hat, sunglasses, and a suit as his wrestling costume. Hamilton "liked [Hughes'] look" and "that's the look [he] wanted in Soul City." (Hamilton Tr. 180:12-181:3.)

f. The actor Michael Clarke Duncan has a muscular physique, and the character he played in the 1998 movie "Armageddon" wears a chain necklace, sunglasses, and a sleeveless shirt. (Hamilton Tr. 175:14-176:3; **Exhibit AA**, Hamilton Deposition Ex. 11.)

g. The character of George Dillon in the 1987 movie "Predator," played by actor Carl Weathers, has a muscular physique and wears a sleeveless shirt and a hat. (Hamilton Tr. 184:16-185:3; **Exhibit BB**, Hamilton Deposition Ex. 14.)

h. Musicians Run DMC and LL Cool J have worn hats, sleeveless shirts, and chain necklaces. (Hamilton Tr. 189:9-15.)

58. Hamilton claims that the number "83" is distinctive to him because that was "the year I played with the Eagles." (Hamilton Tr. 120:24-121:6; *see also* SAC ¶ 65.) Hamilton did not play for the Philadelphia Eagles in 1983. (*See supra* ¶ 48.) Hamilton has identified no other reason the number "83" is distinctive to him.

59. The voice of the Cole character in *Gears of War* is not Hamilton's actual voice. (**Exhibit CC**, Plaintiff's First Amended Response to Defendants' Request for Admission No. 1.) Hamilton alleges that Cole's voice "sounds like" his own. (*See* SAC ¶ 90.)

60. Hamilton claims the voice of the Hard Rock Hamilton persona is distinctive because it is “raspy.” (Hamilton Tr. 56:17-23 (Q: “So it’s your testimony that Hard Rock Hamilton character is the only character you’ve ever heard with a raspy voice? A: Yes.”).)

61. When asked, Hamilton could not identify any other distinctive feature of his persona’s voice other than that it is “raspy.” (Hamilton Tr. 52:12-53:1 (“Q: And sitting here today, you cannot tell me what it is about that voice that is distinctive or unique[?] . . . A: No, I cannot.”); *id.* 53:25-54:3 (“Q: Is it your testimony here today that you cannot define what it is that is distinctive about Hard Rock Hamilton’s voice? A: Correct.”); *id.* 57:14-17 (“Q: Are there any other attributes of your voice [besides “raspiness”] you think are unique to the Hard Rock Hamilton persona? A: No.”).)

62. Hamilton is not the only wrestler with a loud or deep voice, nor is Hard Rock Hamilton the only wrestling persona with a loud or deep voice. (Hamilton Tr. 56:4-16.)

63. Hamilton is not aware of any audio or video recordings created before the release of any of the *Gears* games in which he speaks dialogue found in the games. (Hamilton Tr. 113:3-8.)

64. Hamilton has not licensed or received compensation for his voice, image or likeness, or for the voice, image or likeness of the Hard Rock Hamilton persona. (Hamilton Tr. 215:10-16; Ex. V, Plaintiff’s ROG Response No. 2 (“Plaintiff has not licensed his likeness or voice.”); *see also* **Exhibit DD**, Pl. Resp. to Defendants’ Requests for Production (“Plaintiff’s RFP Response”) No. 25 (confirming that Plaintiff has no documents evidencing any secondary meaning in his voice or other alleged proprietary characteristics of his persona).)

65. Hamilton has not worked as an actor or a voice actor. (Hamilton Tr. 215:21-25.)

66. Hamilton is unable to identify any actual injury to his commercial interests or business reputation. (Plaintiff’s ROG Response No. 5 (admitting Hamilton “is unable to

quantify the harm to his commercial interest and business reputation”); Plaintiff’s RFP Response No. 24 (confirming Hamilton has no evidence of damages in his possession, custody or control).)

67. Speight and Hamilton met on at least one and no more than two occasions, both in 1998. (Speight Tr. 93:13–20; Hamilton Tr. 290:1-12.)

68. Speight wrestled at an event for Soul City Wrestling on July 25, 1998. (Speight Tr. 92:9–15.)

69. Speight never wrestled against Hamilton. (Hamilton Tr. 291:2-4.)

70. Before Speight’s match at Soul City Wrestling, Speight and Hamilton had never met. (Speight Tr. 85:4-86:7, 89:6-21, 91:10-12; Hamilton Tr. 292:3-7.)

71. Hamilton claims that at a party following the July 25, 1998 wrestling event, “Speight discussed plans for a video game” with him that “would feature violence,” and “Hamilton told Speight he was not interested in doing a video game centering on violence.” (SAC ¶ 24.) Hamilton and Speight had no further discussions about a potential video game thereafter. (Hamilton Tr. 292:21-294:1.)

72. Hamilton did not tell anyone about the conversation with Speight or write any notes about it. (Hamilton Tr. 295:2-5, 295:14-18.) Hamilton believed the conversation “didn’t mean nothing.” (Hamilton Tr. 295:14-18.)

73. Speight does not recall ever discussing a video game with Hamilton, including on July 25, 1998. (Speight Tr. 15:5-10, 94:20-95:4.)

74. As of July 25, 1998, Speight had no knowledge of the *Gears of War* games and had not been approached by Epic about providing the voice for the Cole character. Speight did not learn about the *Gears* games until offered the role in 2006. (Speight Tr. 23:13-15; *see also supra* ¶ 10.)

75. Speight and Hamilton never met, spoke, or otherwise communicated after July 25, 1998. (Hamilton Tr. 290:1-5, 292:18-20, 296:19-22, 298:10-15.)

76. Speight never mentioned Hamilton to Microsoft or Epic. (Speight Tr. 96:11–20.)

77. Speight did not tell anyone at Microsoft or Epic that he had previously been a wrestler. (Speight Tr. 96:21–98:4; Fergusson Tr. 144:12-18; Epic 30(b)(6) [Bleszinski] Tr. 33:7-8; Bleszinski Tr. 68:16-69:7.)

78. Hamilton did not have any contact or communications with Epic before this dispute. (Hamilton Tr. 24:20-26:12 (testifying that he has never pitched any ideas to anyone at Epic, sent them recordings or videos, or had any direct communications with anyone at Epic, other than through lawyers relating to this claim); **Exhibit EE**, Pl. Resp. to Defendants’ Requests for Admission (“Plaintiff’s RFA Responses”) Nos. 3 & 4.)

79. Hamilton did not have any contact or communications with Microsoft before this dispute. (Hamilton Tr. 26:25-28:6 (testifying that he has never sent Microsoft any records or videos, discussed a video game with Microsoft, or had any communications with Microsoft); Plaintiff’s RFA Responses 5 & 6.)

80. No Microsoft or Epic witnesses had ever heard of Lenwood Hamilton or Soul City Wrestling before this dispute. (Microsoft 30(b)(6) Tr. 128:19-130:5; Epic 30(b)(6) [Bleszinski] Tr. 37:16-21, 38:7-11, 40:18-41:5; Fergusson Tr. 188:19-22, 190:13-15; Perna Tr. 104:10-18; Lanning Tr. 124:12-128:6; Bleszinski Tr. 67:18-68:10; Hawkins Tr. 49:15-21; Kime Tr. 70:12-17; Larson Tr. 110:8-21; **Exhibit FF**, Transcript of Jim Brown Deposition 43:17-44:6.)



Dated: February 1, 2019

**HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER**

/s/ Bonnie M. Hoffman

William T. Hangley  
Bonnie M. Hoffman  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

Elizabeth A. McNamara (*pro hac vice*)  
**DAVIS WRIGHT TREMAINE LLP**  
1251 Avenue of the Americas, 21st Floor  
New York, NY 10020

Ambika K. Doran (*pro hac vice*)  
**DAVIS WRIGHT TREMAINE LLP**  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101

Alison Schary (*pro hac vice*)  
**DAVIS WRIGHT TREMAINE LLP**  
1919 Pennsylvania Avenue NW, Suite 800  
Washington, DC 20006

*Counsel for Defendants Microsoft, Inc.,  
Microsoft Studios, The Coalition, and Lester  
Speight*

**HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER**

/s/ Bonnie M. Hoffman

William T. Hangley  
Bonnie M. Hoffman  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

Robert C. Van Arnham (*pro hac vice*)  
Andrew R. Shores (*pro hac vice*)  
**WILLIAMS MULLEN, P.C.**  
301 Fayetteville Street, Suite 1700  
Raleigh, NC 27601

*Counsel for Defendant Epic Games, Inc.*